

Montana Water Court
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FILED
04/20/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0790-R-2022
Lambert, Kathryn
4.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Lowe Farm LLC

CASE 43B-0790-R-2022
43B 30118743

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 5 GPM.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 2.33 ACREFEET PER YEAR.

These issue remarks were not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In this instance, the information in the claim file is sufficient to address and resolve the issue remark. In order to discuss the issue remarks and give the claimant an opportunity to file additional evidence if it so chose, an Order Consolidating Case and Setting Scheduling Conference was issued. The November 17, 2022 Court Minutes and Order Setting Filing Deadline set a January 31, 2023 to file documentation resolving the issue remarks. Nothing was filed.

The February 7, 2023 Order Entering Default and Order Setting Deadline Pursuant To Section 85-2-248(9)(a), MCA states:

As Lowe Farm LLC did not comply with the November 17, 2022 Order Setting Filing Deadline, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Lowe Farm LLC is ENTERED.

This claim appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 5 GPM.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 2.33 ACRE-FEET PER YEAR.

As these issue remarks will not be addressed and resolved through the objection process, the Legislature has directed the Water Court to resolve issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. It appears the flow rate should be 5.00 GPM and the volume should be 2.33 ACRE FEET. Pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline for the claimant to show cause in writing why the Court should not proceed with amending claim 43B 30118743 as described above pursuant to section 85-2-248(9)(a), MCA, is **March 10, 2023**. If no additional information is filed by this deadline, the Court will proceed with

amending the claim as detailed above.

Nothing was filed. The Orders are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the flow rate is 35.00 GPM. The flow rate should be 5.00 GPM. The flow rate issue remark should be removed as addressed and resolved.
2. The Preliminary Decree does not include a volume. The volume should be 2.33 AC-FT. The volume issue remark should be removed as addressed and resolved.
3. The Preliminary Decree includes the following notice remark:

THIS EXEMPT CLAIM WAS FILED ON 06/25/2018. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B DECREE ISSUED 01/16/1985.

The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Lowe Farm LLC
1201 Hwy 10 E
Greycliff, MT 59033

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30118743 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LOWE FARM LLC
1201 HWY 10 E
GREYCLIFF, MT 59033

Priority Date: DECEMBER 31, 1920

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 2.33 AC-FT

Households: 1

Maximum Acres: 0.33

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	24	1S	16E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.33		SWNE	24	1S	16E	SWEET GRASS

Total: 0.33